BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.09.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.2333 & 2334 of 2011
and
M.P.(MD)Nos.1 & 1 of 2011

K.V.Sivaramakrishnan (Died)
2.S.Sidharthan
3.Saradha Ramanathan
4.Kamala Venkitaraman
5.Jayanthi Krishnan
6.S.Veknatakrishnan .. Petitioners in both petitions

Vs.

The Commercial Tax Officer,
Nagercoil (Tower Junction),
Mead Street, Nagercoil - 629 001,
Kanyakumari District. ... Respondent in both petitions

[Petitioners 2 to 6 are substituted vide order dated 04.07.2018 made in W.M.P.(MD)Nos.19900 & 199901 of 2017 in W.P.(MD)Nos.2333 & 2334 of 2011]

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS, calling for the records on the file of the respondent in CST 505168/02-03 and 505168/03/04, respectively, dated 20.01.2011 and to quash the same as illegal and in violation of the principles of natural justice and to direct the respondent to grant the petitioner the opportunities and opportunity of personal hearing as required in the reply dated 15.12.2010.

For Petitioners : Mr.M.Azeem
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader
(In both petitions)

COMMON ORDER

These writ petitions have been filed seeking a Writ of Certiorarified Mandamus to quash the impugned orders of the respondent in CST Nos. 505168/02-03 and 505168/03/04, respectively, dated 20.01.2011 and to direct the respondent to pass fresh orders, after affording an opportunity of personal hearing to the petitioners.

2. As the issue involved in both the writ petitions is similar in nature, they are disposed of by way of this common order.

3. One K.V.Sivaramakrishnan, who was the proprietor of Krishna

Salt Works, has filed these writ petitions. The Company is involved in the production and selling of common salt and an assessee on the file of the respondent herein. They had made inter-state sale of industrial salt to one M/s.Travancore Cochin Chemicals Ltd., (TCC Ltd.,), Cochin, for which, 4% Central Sales Tax (CST) on the sale price of the salt has been raised. According to the petitioner, freight charge is a variable one and therefore, it was agreed upon the parties to separately pay the freight charges for inter-state transport. TDS has also been deducted for the same. While being so, the Enforcement Wing officials of the respondent Department inspected the premises of the petitioners and made enquiry regarding the freight charges, followed by which, the respondent issued pre-revision notice for the assessment years 2002-03 and 2003-04, proposing to assess the freight charges @ 12% under TNGST Act. After some rounds of litigation, the respondent withdrew the earlier notice and issued fresh notice, proposing to assess the freight charges @ 10% under the CST Act along with penalty.

4. Learned Counsel for the petitioners would submit that on receipt of the said notice, Sivaramakrishnan appeared before the respondent's predecessor in office and submitted a detailed reply along with supporting documents. Having satisfied with the same, the respondent's predecessor in office decided to drop the proposal of assessment and has forwarded the deviation proposal to drop the assessment to the Deputy Commissioner (CT), Nagercoil, who, in turn, has approved and forwarded the same to the Joint Commissioner (CT), Tirunelveli for approval. But, the Joint Commissioner (CT), Tirunelveli declined to grant such approval and thereafter, the respondent herein issued another pre-revision notice for the subject assessment years, for which, the said Sivaramakrishnan submitted a reply and sought for an opportunity of personal hearing. But, without affording such an opportunity, the impugned orders came to be passed, holding that since personal hearing was granted before the deviation proposal, one more opportunity of personal hearing is not necessary. Hence, the present petitions came to be filed.

5. During the pendency of the writ petitions, the said Sivaramakrishnan passed away and therefore, the petitioners 2 to 6 were brought on record vide orders of this Court dated 04.07.2018 made in W.M.P.(MD)Nos.19900 & 199901 of 2017 in W.P.(MD)Nos.2333 & 2334 of 2011.

6. Learned Additional Government Pleader, while defending the impugned orders, would submit that freight charges are includable in the sales turn over, which the petitioners failed to show and as such, there is no error or illegality in the impugned orders. With regard to the opportunity of personal hearing, relying upon the impugned orders, the learned Additional Government Pleader would submit that since personal hearing was granted before the deviation proposal, one more opportunity of personal hearing is not necessary for the very same proposal and therefore, based on the documents available on record as well as after considering the representation

of the petitioners, the respondent has passed the impugned orders and hence, he prays for dismissal of the present writ petitions.

7. Heard the learned Counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondent.

8. Pursuant to the direction of this Court, the learned Additional Government Pleader has produced the entire documents pertaining to the case and this Court has also perused the same.

9. It is not in dispute that the respondent's predecessor in office decided to drop the proposal, but, the Joint Commissioner declined to grant the approval. No doubt, power is vested with the higher authority to independently decide the issue. It is seen that the Joint Commissioner has declined to grant such approval, stating that the deviation proposal was prepared only on the basis of objections and not on records, viz., contract, statement of freight charges, etc. Hence, the respondent has proceeded further with the matter. No doubt, the respondent has to proceed with the matter and after complying with the discrepancies pointed out by the Joint Commissioner, he has to take an independent decision, either to drop the proposal or to proceed further.

10. But, the question that now emerges in the minds of this Court is that, is it not incumbent on the part of the respondent to verify the records, after affording an opportunity of personal hearing to the petitioners to establish their case. If the respondent proposed to take the similar stand, as of the respondent's predecessor in office, then the matter rests there. Having decided to decline from the predecessor's view, it is obligatory on the part of the respondent to afford an opportunity of personal hearing. Having denied such opportunity and passing the impugned orders, in my considered opinion, it is nothing but violation of principles of natural justice.

11. Though the Courts have time and again directed the authorities to afford an opportunity of personal hearing to the aggrieved parties, before deciding an issue, the same is not scrupulously followed by the authorities.

12. In such view of the matter, the impugned orders in CST Nos.505168/02-03 and 505168/03/04, respectively, dated 20.01.2011 are set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to fix a specific date for hearing, within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioners, in advance. On the said date, the petitioners are directed to appear before the respondent along with supporting documents and after hearing the petitioner, the respondent shall pass appropriate orders, purely on merits, within a further period of four weeks thereafter. It is made clear that this Court has not gone into the merits of the case and it is for the respondent to

decide the same, on its own merits and in accordance with law. Needless to mention that if the petitioners are not co-operating for the enquiry proceedings, the respondent shall record the same and proceed further with the available records.

13. Accordingly, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Commercial Tax Officer,
Nagercoil (Tower Junction),
Mead Street, Nagercoil – 629 001,
Kanyakumari District.

- 2 CCs TO Mr.M.Azeem , ADVOCATE IN SR Nos.84455,84456.
- +1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.84888.
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- GK
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